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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,614	12/30/2003	Eugenio Go Varona	19687	7490

23556 7590 11/01/2006

KIMBERLY-CLARK WORLDWIDE, INC.  
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EXAMINER

PIZIALI, ANDREW T

ART UNIT PAPER NUMBER

1771

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No: 10/748,614	Applicant(s) VARONA ET AL.	
	Examiner Andrew T. Piziali	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,8-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,11,13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 10/1/2006 has been entered. The examiner has withdrawn the 35 USC 112 rejections based on the amendments to the claims. Applicant's amendment necessitated the new grounds of rejection presented in this Office action.

### ***Claim Objections***

2. Claim 15 is objected to because of the following informality: The claim is identical to claim 13. Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 102/103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 3-5, 11 and 18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 98/03713 to Amundson et al. (hereinafter referred to as Amundson).

Regarding claims 1, 3-5, 11 and 18, Amundson discloses a wet wipe comprising a cleaning fluid (water) and a laminate wherein the laminate comprises a first layer comprising a web capable of holding and releasing the cleaning fluid, said first layer comprising a coform web comprising thermoplastic meltblown microfibers and wood pulp fibers, a second layer adjacent the first layer and having a lesser affinity for the cleaning fluid than the first layer, said second layer comprising polypropylene fibers, and a third layer comprising a web capable of holding and releasing the cleaning fluid, said third layer comprising a coform web comprising thermoplastic meltblown microfibers and wood pulp fibers (see entire document including page 3, lines 24-30, page 5, lines 1-17, page 6, lines 5-31, and page 9, lines 23-30). Considering that Amundson discloses that the first and third layers comprise hydrophilic fibers (wood pulp fibers) while the second layer consists of hydrophobic fibers (polypropylene fibers), the layers inherently satisfy the claimed equations and inherently possess the claimed characteristics.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to

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obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

In the event that it is shown that the applied prior art does not disclose the claimed embodiment with sufficient specificity, the invention is obvious because the prior art specifically discloses the claimed constituents. In addition, in the event that it is shown that water is not considered a cleaning fluid, it is noted that Amundson discloses that the wet wipe may be used a household cleaning wipe (page 1, lines 10-15). The examiner takes Official Notice that a household cleaning wet wipe conventionally comprises a cleaning fluid. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a cleaning fluid to the wet wipe, because the cleaning fluid would assist in the wet wipe's ability to clean a surface.

Regarding claims 3-5, Amundson does not appear to specifically mention the thickness of each layer, but Amundson does disclose that the basis weight of the layers may define an outer/inner/outer layer weight ratio of from about 10/80/10 to about 40/20/40 (page 8, lines 6-12). Therefore, Amundson appears to teach that the thickness of the second layer may comprise at least 35% of the thickness of the laminate. In the event that it is shown that Amundson does not disclose the claimed thickness with sufficient specificity, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the thickness of the second layer, such as to at least 35% of the thickness of the laminate, because it is understood by one of ordinary skill in the art that the layer thicknesses determine properties such as strength, flexibility, and softness, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 3-5, considering that the inner layer may consist of hydrophobic polypropylene fibers while the outer layers may comprise up to 95% hydrophilic wood pulp fibers (paragraph bridging pages 5 and 6 and page 9, lines 23-30), and considering that the basis weight of the layers may define an outer/inner/outer layer weight ratio of from about 10/80/10 to about 40/20/40 (page 8, lines 6-12), it appears that the second layer may hold less than 10% by weight of the cleaning fluid present in the wipe. In the event it is shown that Amundson does not disclose the claimed property with sufficient specificity, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the amount of wood pulp fibers in the outer layers, such that the outer layers hold at least 90% of the cleaning fluid, because it is understood by one of ordinary skill in the art that some wet wipe applications desire the vast majority of the fluid to reach the wiping surface.

Regarding claim 11, Amundson discloses that the coform nonwoven webs may each independently comprise between about 40 to about 80% by weight of pulp and from about 20 to about 60% by weight of thermoplastic filaments (paragraph bridging pages 5 and 6).

Regarding claim 18, Amundson discloses that the first and third layers may each independently may have a basis weight of about 10 gsm to about 34 gsm, and the second layer may have a basis weight of about 5 gsm to about 34 gsm (page 7, line 30 through page 8, line 12).

***Claim Rejections - 35 USC § 103***

6. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/03713 to Amundson as applied to claims 1, 3-5, 11 and 18 above, and further in view of USPN 6,884,494 to Curro et al. (hereinafter referred to as Curro).

Regarding claims 3-5, Amundson does not appear to specifically mention the thickness of each layer, but Amundson does disclose that the basis weight of the layers may define an outer/inner/outer layer weight ratio of from about 10/80/10 to about 40/20/40 (page 8, lines 6-12). Therefore, Amundson appears to teach that the thickness of the second layer may comprise at least 35% of the thickness of the laminate. In the event that it is shown that Amundson does not disclose the claimed thickness with sufficient specificity, Curro is relied upon to disclose that it is known in the wet wipe art (column 17, lines 19-28) to make a wet wipe wherein the second layer comprises at least 35% of the thickness of the laminate (column 4, lines 33-53 and Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the thickness of the second layer, such as to at least 35% of the thickness of the laminate, because it is understood by one of ordinary skill in the art that the layer thicknesses determine properties such as strength, flexibility, and softness, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 3-5, considering that the inner layer may consist of hydrophobic polypropylene fibers while the outer layers may comprise up to 95% hydrophilic wood pulp fibers (paragraph bridging pages 5 and 6 and page 9, lines 23-30), and considering that the basis weight of the layers may define an outer/inner/outer layer weight ratio of from about 10/80/10 to about 40/20/40 (page 8, lines 6-12), it appears that the second layer may hold less than 10% by

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weight of the cleaning fluid present in the wipe. In the event it is shown that Amundson does not disclose the claimed property with sufficient specificity, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the amount of wood pulp fibers in the outer layers, such that the outer layers hold at least 90% of the cleaning fluid, because it is understood by one of ordinary skill in the art that some wet wipe applications desire the vast majority of the fluid to reach the wiping surface.

7. Claims 13, 15-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/03713 to Amundson as applied to claims 1, 3-5, 11 and 18 above, and further in view of USPN 5,755,906 to Achter et al. (hereinafter referred to as Achter).

Regarding claims 13, 15-17 and 19, Amundson discloses that the second layer may consist of a nonwoven layer of polypropylene (hydrophobic) fibers (page 9, lines 23-30), but Amundson does not appear to mention a second layer of closed cell foam. Achter discloses that it is known in the wipe/absorbent pad art that a closed cell foam is a functionally equivalent viable alternative to a nonwoven layer of hydrophobic fibers (see entire document including the paragraph bridging columns 4 and 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the second layer from any suitable material, such as a nonwoven layer of hydrophobic fibers or a closed cell foam, as taught by Achter, because the materials are functionally equivalent viable alternatives and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claim 16, the second layer, consisting of a closed cell foam, would inherently possess no fluid because the material does not absorb fluid.



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Regarding claims 17 and 19, Amundson discloses that the coform nonwoven webs may each independently comprise between about 40 to about 80% by weight of pulp and from about 20 to about 60% by weight of thermoplastic filaments (paragraph bridging pages 5 and 6).

Regarding claim 19, Amundson discloses that the first and third layers may each independently may have a basis weight of about 10 gsm to about 34 gsm, and the second layer may have a basis weight of about 5 gsm to about 34 gsm (page 7, line 30 through page 8, line 12).

### ***Response to Arguments***

8. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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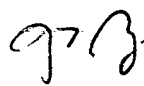
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

atp

 12/25/06  
ANDREW PIZIALI  
PRIMARY EXAMINER